



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO 45 OF 2018

FREDRICK NDUGO MUIRURI.....PLAINTIFF/APPLICANT

VERSUS

MARY NJOKI MUIRUR.....1ST DEFENDANT/RESPONDENT

BONIFACE KARANJA MUIRURU.....2ND DEFENDANT/RESPONDENT

BENSON GITAU NGANGA.....3RD DEFENDANT/RESPONDENT

ELIZABETH WANGUI FRANCIS.....4TH DEFENDANT/RESPONDENT

TERESIA NYAMBURA GACHERU.....5TH DEFENDANT/RESPONDENT

RULING

1. This is a Preliminary Objection that was preferred by the Plaintiff challenging representation of the Defendant by the firm of R.M Kimani & Co Advocates and the bill of costs filed on 24/1/20 by the said firm. The objection is brought within the provisions of Order 9 Rule 9 of the Civil Procedure Rules.

2. The Plaintiff raised the objection before the Deputy Registrar during taxation of costs and urged that the Defendant/ Applicant party and party bill of costs was filed by the new Advocate without leave of the Court or consent from previous Counsel. That the bill is improperly on record. The 4th and 5th Defendants were not affected by the objection and opted not to participate in it.

3. The Respondent/2ndDefendant was represented by the firm of Gacheru & Co Advocate from the inception of the suit until judgment. The Plaintiff's suit was dismissed with costs to the Defendant's. Both Defendants filed bills of costs before the Deputy Registrar, however the 2nd Defendant had appointed the firm of R.M Kimani to act for him.

4. The Notice of Appointment of the new Advocate was filed on 24/1/20 and was served on the firm of B. N Kilonzo & Nderi Kiingati & Co. Advocates who acted on the Plaintiff. The firm also filed the impunged bill of costs on even date.

5. The firm of R.M Kimani & Co. Advocates have opposed the objection and contend that the 2nd Defendant filed an application to act in person after Mr. Gacheru passed on. That it was not possible to obtain consent from the Gacheru. That R.M Kimani Advocate came after the 2nd Defendant filed notice to act in person. According to the Respondent firm they complied with procedure and that no leave was required since the 2nd Defendant was in person.

6. Order 9 Rule 9 of Civil Procedure Rules provides as follows;

“When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court— (a) upon an application with notice to all the parties; or (b) upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be.”

7. In this case the 2nd Respondent has stated the previous Advocate on record for the 2nd Defendant passed on and the 2nd Defendant filed a notice to act in person on the 29/11/2019. This was after the judgement of the Court was issued on the 27/6/2019.

8. Order 9 Rule 12 provides for the manner of the change of Advocate in the event of the demise of Counsel. It provides as follows;

“Where an Advocate who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of Advocates, or is otherwise unable to act as an Advocate, and the party has not been given notice of change of Advocate or notice of intention to act in person in accordance with this Order, any other party to the cause or matter may, on notice to be served on the first-named party personally or by prepaid post letter addressed to his last-known place of address, unless the Court otherwise directs, apply to the Court for an order declaring that the Advocate has ceased to be the Advocate acting for the first named party in the cause or matter, and the Court may make an order accordingly.

9. Applying the above provisions to the circumstances of this case, it follows that the 2nd Defendant ought to have complied with the provisions of Order 9 Rule 9 by seeking leave of the Court to act in person. Equally any other party may move the Court in the case of a deceased Advocate and where the party to the suit has not moved the Court under Order 9 Rule 9, apply to Court for an order declaring that the Advocate has ceased to be the Advocate acting for the named party.

10. In this case the 2nd Defendant failed to comply with the provision of Order 9 Rule 9 and therefore the appointment of Messrs Kimani & Co Advocates is contrary to the provisions of the said cited order.

11. In the upshot the Preliminary Objection is upheld with the consequence that the bill of costs on record is struck out. The firm of R N Kimani are on record improperly.

12. Costs are payable by the 2nd Defendant in favour of the Plaintiff.

13. **It is so ordered.**

DATED, SIGNED & DELIVERED AT MURANGA THIS 30TH DAY OF NOVEMBER 2020.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of;

Kinuthia HB for Nderi for the Plaintiff

1st – 3rd Defendants: Absent

Kilonzo for the 4th & 5th Defendants

Njeri & Kuiyaki: Court Assistants